

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing amendment of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary has also determined that this emergency clearly poses such an immediate, serious harm that delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

### Specific Facts Showing the Need for Immediate Action

Mediterranean fruit fly is a destructive insect pest which attacks the fruit of various plants including over 260 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries.

The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

Mediterranean fruit flies were recently detected in Los Angeles County. On October 24, 2007, an adult mated female Mediterranean fruit fly was taken from a trap in the Rancho Palo Verdes area of Los Angeles County. On October 24, 2007, two mated and one unmated adult female Mediterranean fruit flies were taken from a trap in the Rolling Hills area of Los Angeles County. The detection of four adult Mediterranean fruit flies was indicative of an incipient infestation of the fly in these areas of Los Angeles County. As a

result, the Department implemented an emergency amendment to Section 3406(b) which added approximately 57 square miles surrounding the Rancho Palo Verdes and Rolling Hills areas of Los Angeles County that was effective October 29, 2007. This regulation was again amended as an emergency action on November 6, 2007, adding another approximate two square miles of the Port of Los Angeles area to the regulation for a total of approximately 59 square miles.

On November 14, 2007, one unmated female Mediterranean fruit fly was taken from a trap in the Torrance area of Los Angeles County. On November 15, 2007, two adult mated female Mediterranean fruit fly were taken from two separate traps in the Palos Verdes Estates area of Los Angeles County. On November 15, 2007, one unmated adult female Mediterranean fruit fly was taken from a trap in the Rolling Hills Estates area of Los Angeles County. On November 17, 2007, one adult male Mediterranean fruit fly was taken from a trap in the Rolling Hills Estates area of Los Angeles County. The detection of five additional adult Mediterranean fruit flies is indicative of an incipient infestation of the fly in these additional areas of Los Angeles County. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for a quarantine response. The Food and Agriculture Organization of the United Nations has a similar international standard established.

The quarantine area includes all detection sites as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from the epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary line was drawn jointly by the local United States Department of Agriculture (USDA), the California Department of Food and Agriculture, and the Los Angeles County Agricultural Commissioner.

The immediate implementation of this proposed regulatory action is also necessary to continue to maintain the original emergency action and to prevent the USDA from considering the entire state as infested with Mediterranean fruit fly. On November 20, 2007, the USDA notified us that the current proposed draft text and maps

was needed for a Bilateral Trade meeting with Taiwan. Additionally, the USDA is in the process of revising a federal domestic regulation and cannot regulate less than the entire State unless it has a parallel State regulation. If the USDA were to regulate the entire State, there would be additional detrimental quarantine requirements directed against California host commodities by the USDA and our concerned international trade partners.

The Mediterranean fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated.

Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code Section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

This amendment will expand the existing quarantine area (approximately 59 square miles) in Los Angeles County by approximately 13 square miles to the north and southeast, including an additional portion of the Port of Los Angeles. To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate movement of hosts which can carry the fly within and from this additional surrounding buffer zone. Therefore, it is necessary to amend Section 3406(b) on an emergency basis.

#### Authority and Reference Citations

Authority: Sections 407 and 5301, 5302 and 5322, Food and Agricultural Code.

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#### Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce such quarantine regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests to protect California's agricultural industry.

#### Section 3406. Mediterranean Fruit Fly Interior Quarantine.

This amendment will establish an additional quarantine area for Mediterranean fruit fly of approximately 13 square miles to the north and southeast, including an additional portion of the Port of Los Angeles in Los Angeles County. The effect of the amendment is to provide authority for the State to regulate movement of hosts and possible carriers of Mediterranean fruit fly within and from the area under quarantine to prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3406 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Los Angeles County Agricultural Commissioner requested the changes in the regulation.

#### Cost Estimate

The Department also has determined that no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State will result from the proposed action.